FIFTH DAY.

Senate Chamber,
Austin, Tex., Thursday, May 27.

Senate met pursuant to adjournment.

Lieutenant Governor Jester in the chair.

Roll called.

No quorum, the following Senators answering to their names:

Atlee.	Lewis.
Bailey.	Linn of Victoria.
Beall.	Linn of Wharton.
Bowser.	Neal.
Burns.	Ross.
Colquitt.	Stafford.
Gough.	Terrell.
Greer.	Wayland.
Harrison.	Woods.
Kerr.	Yett.

Absent.

Boren.	Rogers.
Darwin.	Stone.
Dibrell.	Tillett.
Goss.	Turney.
Morriss.	Yantis.
Presler.	

Prayer by the Chaplain, Rev. F. S. Jackson, as follows:

Almighty God: We rise to bless Thee with a new Psalm, for Thy mercies have been renewed in our life day by day. Every hour has brought its own miracle of grace, every moment has seen some fresh display of Thy patience or providential care. Thou hast given us bread to eat, and hast sheltered us from the darkness. Thou hast given unto us rest in sleep, and the renewal of strength therein, Thou hast continued unto us our reasoning faculties, the chain of friendship. For all these we bless Thee with a rising gratitude. We mourn our sin. We have done the things we ought not to have done, we have left undone the things we ought to have done. Let us hear the utterance of Thy forgiving love, and may all the ministry of Chirst be sent to our aid, we ask in His name. Amen.

On motion of Senator Atlee, the Senate adjourned to 4:30 p. m.

AFTERNOON SESSION.

Senate met pursuant to adjournment.

Lieutenant Governor Jester in the chair.

Roll called.

Quorum present, the following Senators answering to their names:

Atlee.	Linn of Victoria.
Bailey.	Linn of Wharton.
Beall.	Neal.
Bowser.	Ross.
Burns.	Stafford.
Colquitt.	Stone.
Gough.	Terrell.
Greer.	Wayland.
Harrison.	Woods.
Kerr.	Yett.
Lewis.	

Absent.

Boren.	Presler.
Darwin.	Rogers.
Dibrell.	Tillett.
Goss.	Turney.
Morriss.	Yantis.

On motion of Senator Linn of Victoria, Senator Boren was excused indefinitely on account of the serious illness of his son.

On motion of Senator Woods, Senator Gough was excused for non-attendance on Saturday last on account of important business.

On motion of Senator Ross, all Senators who have been absent and not excused since the reconvening of the Legislature were excused.

The Chair announced that he had a letter from Engrossing Clerk of the Senate W. F. Linn announcing his resignation as such clerk.

On motion of Senator Gough, the above stated resignation was accepted and the Senate proceeded to the election of an Engrossing Clerk.

Senator Gaugh nominated N. W. Floyd, and there being no other nominations, the Chair appointed Senators Bowser and Ross as tellers.

Mr. Floyd receiving 21 votes was declared elected and immediately took the oath of office.

On motion of Senator Colquitt, a committee of three was appointed to notify the House that the Senate was organized and ready to proceed to business, and a like committee to notify the Governor of the Senate's readiness to proceed to business.

The committees were as follows:

To notify the House, Senators Colquitt, Burns and Kerr.

To notify the Governor, Senators Terrell, Yett and Neal.

The following communication from the House was received:

We are directed by the House of Representatives to inform the Senate that the House of Representatives of the Twenty-fifth Legislature, in special session convened has a quorum pres-

ent and is ready to proceed with business.

FIELDS of Hill,
SEABURY,
DICKINSON,
Committee.

Senator Colquitt reported that the committee appointed to notify the House of the Senate's readiness to proceed to business had performed its duty.

Senator Terrell reported that the committee appointed to notify the Governor of the Senate's readiness to proceed to business had performed its duty.

EXECUTIVE MESSAGE.

The following message from the Governor was received:

Executive Office,
May 25th, 1897.

To the Senate and House of Representatives:

It is respectfully recommended that laws be passed making appropriations to pay existing deficiencies, amending or abrogating the law relating to fellow-sevants, making appropriations for the support of the State government for the two years beginning March 1st, 1897, and other needful purposes as is usual in general appropriation bills, and fixing and regulating the fees and compensation of district attorneys and county and precinct officers.

The deficiency appropriation bill, which was reported favorably by the Finance Committee of the House of Representatives, and which passed the Senate, carries appropriations aggregating $121,192.42. To this there seems to be no objection, except as to compensation for stenographers engaged by the Courts of Civil Appeals for the Second, Third and Fifth districts. Employment of stenographers by these courts is certainly authorized if not enjoined (Rev. Stats., art. 1012), the services have been performed and being just the accounts, it seems to me, should be paid. If, however, the opposition is unyielding, the remaining claims should be promptly satisfied, as it would be clearly unjust to delay payment of them by reason of objection to the claims of stenographers.

In my judgment, the doctrine of fellow-servants, that a person engaged in service can not recover damages of his employer for personal injuries, nor his family if death ensues, if the negligence of a fellow-servant, should be abrogated by express law, because it is illogical, indefensible and unwise. If this be not done, the measure on this subject which passed the Senate abrogating the principle as to certain railway employes and otherwise relieving the cruelty of the rule, as demanded by the Democratic platform, should be enacted. Opposition to this policy in the Legislature seems to rest upon the propositions that railway employes take the risk of the negligence of their associates, and that to compel the companies to pay damages for such injuries would increase railway charges. Neither of these contentions, it is submitted, is sound. Persons who engage in the service of railway companies do not, for the wages contracted for, as is frequently insisted, assume the risk of the negligence of their fellow-servants. The business is extra hazardous, and their compensation is based upon the services rendered and the peril of the employment. Thousands of persons are injured or killed while employed on railways by mere accidents and casualties, wholly free from the negligence of anyone, and those only are the risks paid for and assumed by the employes, and for which they should not recover damages. It is a common argument of railway companies to insist that the modification or abolition of this doctrine will authorize an increase in freight and passenger charges, because it will increase company expenses. It is the familiar corporate reasoning against taxation and other liability, audacious because it involves a threat of retaliation and unsound because if pursued to its logical conclusion it will result in absolute relief for the corporations against either liability or taxation. If the basis of this argument were true, legislators should not hesitate to make the change if it be just to the large body of railway employes, regardless of such consequences. But it is untrue. Damages which are the result of the negligence of railway corporations or their agents are not legitimate operating expenses upon which an increase in rates may be justly predicated, for that in a measure would reward wrongdoing. Formerly and under different managements, when judgments were rendered against railway companies, whether in favor of employes or others, it was usual to increase freight rates on the town where the trial was had and in a few weeks recoup the

railroad Commission now establishes rates, and this species of injustice is impracticable.

In the consideration of a general appropriation bill, the one passed by the two houses may be taken as a basis. The Finance Committees gave the subject of State finances most thorough and exhaustive examination. They labored with commendable industry and zeal, but were so embarrassed by importunities from State institutions and the failure of the Legislature to enact laws which would authorize them to reduce heavy items of appropriation as to make it impracticable to bring expenditures insisted upon within the revenue receipts. As stated in a former communication, this bill under existing laws would create a deficit the first year of $387,282, and for the two years $313,913. To this should be added, under the recent opinion of the Attorney General, that the available school fund may not be used for the support of the Sam Houston Normal Institute, the $28,000 given that institution out of the school fund, making the total deficit $341,913 for the two years. The bill contained an increased appropriation of $365,000 for educational institutions and the insane asylume. From this statement three things are apparent: (1) expenses must be reduced or taxes increased, (2) in the absence of increased taxation the entire increase in the institutions above mentioned can not be allowed, and (3) the fees in felony cases and expenses of attached witnesses in such cases, aggregating $1,030,000 in two years, must be materially reduced if any substantial additional allowance is given these institutions. As it is important that the cause of education should be fostered and the insane cared for, as well as general public interests subserved, the serious duty confronts the Legislature of reducing expenditures. Taking the appropriation bill passed at the regular session as a basis, it is believed these reductions may be safely made for the next two years exclusive of some small items: In the Governor's office, $5000; relief of liquor dealers, $10,000; in the University, $10,000; in the Agricultural and Mechanical College, $10,000; in the Sam Houston Normal Institute, $20,000; for fees in examining trials, $20,000; permanent improvements at the Austin Lunatic Asylum, $63,920; and permanent improvements at the San Antonio Asylum, $69,000; aggregating $207,920. The fees in felony cases and expenses of attached witnesses should be so fixed that an annual appropriation of $300,000 for the former and $50,000 annually for the latter, as against $375,000 and $75,000 respectively, will be sufficient. In considering appropriations for the Sam Houston Normal Institute, Agricultural and Mechanical College, University and the insane asylums, it is not a question of friendship, but of ability. The bill disapproved increased appropriations for the three schools mentioned $100,000, and the foregoing recommendation allows $60,000 increase divided between the College and University, based upon the fact that the officials of the Normal do not insist upon an additional allowance, and that the College and University in the present financial condition of the State should be satisfied with this. Additional asylum room is absolutely necessary, and should be provided. For lack of means, it is impracticable to enlarge all of the asylums, and at one time it was believed that the proper course was to increase the capacity of the one at San Antonio only. Further consideration of the subject, and especially in view of the great distance from this asylum of the bulk of our population, thus affecting materially the cost to the various counties and the State of transporting the patients, leads me to suggest that the Terrell asylum, which is nearer this distant population than Austin, as well as that at San Antonio, be enlarged. With the appropriation of $63,920 for permanent improvements and maintenance at the Terrell asylum and an appropriation of $71,000 for the San Antonio asylum for an additional wing and maintenance 600 additional patients can be accommodated. This will probably answer present necessities and reduce asylum expenses $130,000, as compared with the bill which was disapproved.

Not only are we pledged to reform the fee system, affecting district attorneys and county and precinct officers, but it is likewise demanded by the public welfare. No one acquainted with the present system can doubt the necessity for this reformation, and the party promise of it was deliberate and sincere. Speaking generally, the complaint against the present classification of fees arises from the enormous drain upon the State treasury in felony cases and the heavy aggregate of fees received by officials in many of the counties. In 1889, and before the Populist party was organized, Governor Ross called attention to the abuses of the system in its application to felony

cases, saying in his message of that year: "In this connection it is worthy of remark that while the executive branch of the government, and many, if not all, of the penal and charitable institutions, seem from present information to have been kept strictly confined in their expenditures within the limit of the appropriations provided, and many have covered back into the treasury unexpended balances from last year, the judicial department has transcended its appropriations, and the deficiency to be provided for in payment of the fees of sheriffs, clerks, attorneys, special judges, attached witness and justices and constables in examining courts amounts to $337,600. From this enormous increase in the cost of enforcing our criminal laws under the existing statutes, you may likely discover an explanation of the possible stringency in our public finances, and it may direct your efforts toward a reasonable retrenchment in this department of government, as well as the others. The amount of fees in felony cases paid district attorneys, sheriffs and clerks in district courts for the year 1881 was $178,796.65, and increased in 1882 to $404,606.98, then diminished in 1883 to $230,862.83. But from that period the increased ratio has been uniformly rapid, until it has reached the enormous sum in 1888 of $509,155.55. It is needless to suggest that any effort at retrenchment and reform in this direction by merely restricting the amount of appropriations, without a change in the law under which extravagance, if any, originates, would be futile and delusive, for the claims would still come up in ever-recurring deficiencies and have to be recognized and honored." For the past two years, $1,030,000 was paid by the State as fees of sheriffs, clerks and attorneys in felony cases and for expenses of attached witnesses, about one-fourth of the cost of the entire State government. Showing the extent to which the compensation of county officials has grown, thus unnecessarily burdening the people and offering occasion for political dictation and corruption, Governor Hogg said in his message in 1895: "In some instances in this State it is well known that a single county official receives fees and salaries in the aggregate far in excess of the three Supreme judges, or more than the Governor, Attorney General and Treasurer all put together. Many others receive more than any district or Supreme judge, or any State official service of counties that, before election, could be employed at from $50 to $75 per month in private pursuits, but who, on going into office, receive fees and salaries from $3000 to $12,000 a year." The necessity for this legislation plainly existing, it becomes important to inquire into its leading features. Manifestly, the controlling principle should be just compensation for the services rendered and not an opportunity to make money at public expense. It should protect the State treasury, as well as afford relief to individuals and litigants. The money which is paid by the State as fees in felony cases and for attached witnesses represents taxes paid by every taxpayer, and consequently a reduction of these operates far more generally for the public benefit than a reduction of fees paid by comparatively few citizens who have occasion to engage in law suits. What has been termed the scaling method of reducing fees—that is, reducing the charge for each service rendered—has in its general features, it appears to me, important advantages over the system which merely limits the aggregate of fees each officer may receive. The limitation system requires complex bookkeeping, a return of any surplus to the county or State treasury in proportions difficult to estimate, and removes a stimulus for the performance of official duty after the limit is reached. The scaling system leaves the money in the hands of the taxpayers in fees paid by the State, avoiding assessment, collection and return of any surplus to the State treasury, and leaves the money in the hands of litigants in fees paid by individuals, who are entitled to it, instead of taking it from them and putting it into the county treasury as so much more than their share of taxation. Except in the case of district attorneys, who are paid entirely by the State, the limitation plan is difficult of application, because in some instances compensation is paid by the State and counties, and in others by the State, counties and individuals. The good in the limit plan, which is found in fixing definite aggregate sums, may be approximated in the scaling plan by so adjusting the ratio of reduction as to reach substantially the same results. It seems to be objected to the scaling plan that it will work injustice to officials in small counties by reducing fees while now they barely afford a livelihood, but this need not be an insuperable obstacle. The Constitution does not require a uniform operation

Any deserving fee system must rest upon the principle of just compensation, and it would not be repugnant to the Constitution to so frame a measure by reference to the population of the counties as that the total compensation in the several counties would be a reasonable reward for the labor performed. In fact, the uniform rule of fees operating throughout the State has brought about the disparity of total compensation in officials which now exists, reasonable in some cases, high in some and exorbitant in others, and a rule less uniform in detail, but looking chiefly to fair remuneration in the aggregate, would be constitutional. A law of Ohio, limited in operation to one county, which regulated official fees, was upheld by the Supreme Court of that State under a Constitution far more restrictive than ours. (State v. the Judges, 21 Ohio State, 1.) A much stronger case is found in Indiana, where it was held that a statute in which the salaries of judges varied with population was constitutional. (State v. Reitz, 62 Ind., 159.) It is said also that a scaling process which is not made applicable to all counties would concentrate business in the larger counties, where the separate items of fees were smaller, but it occurs to me that this would be inappreciable and should not weigh against the general good of the system. It could not possibly affect the treasurer, assessor, collector, district attorney, county attorney or the recording fees of the county clerk. In rare instances it might induce the institution of suits in the larger rather than smaller counties, but with our venue laws and the small saving in isolated cases it would be of slight consequence. If the scaling system should be adopted, the fees in felony cases should be reduced 25 per cent, with a reasonable reduction in civil fees, and it should be made applicable to every county in the State in which 3000 votes were cast at the preceding election. Repeal of the laws allowing fees in examining trials and attachment of witness before grand juries in foreign counties would materially reduce official fees and expenses of attached witnesses without injury to the public service. Under existing laws, it is the common practice to issue attachments in the first instance to counties other than that of the trial and have sheriffs carry the witnesses before the court. Abuses of this law have been frequent and scandalous. The per diem and the actual and fraudulent traveling expenses of sheriffs in such cases can be saved by issuing subpoenas instead of attachments, clothing the court with ample authority to punish witnesses for disobedience of the process. While favorable to the character of measure thus outlined, any reasonable bill will be approved. The demand is for immediate relief against extravagance and injustice, and it matters little through what constitutional form it may be effected.

C. A. CULBERSON.

BILLS AND RESOLUTIONS.

By Senators Stafford and Atlee:

Senate bill No. 1, a bill to be entitled "An act to amend article 4560g, of chapter 12b, title XCIV, of the Revised Civil Statutes of the State of Texas, on the subject of railroads, defining who are fellow-servants."

Read first time, and referred to Judiciary Committee No. 1.

By Senator Colquitt:

Senate bill No. 2, a bill to be entitled "An act making appropriations for the support of the State government for the years beginning March 1, 1897, and ending February 28, 1899, and for other purposes."

Read first time, and referred to the Committee on Finance.

By Senator Stone:

Senate bill No. 3, a bill to be entitled "An act making appropriations for the support of the State government for the years beginning March 1, 1897, and ending February 28, 1899, and for other purposes."

Read first time, and referred to the Committee on Finance.

By Senators Terrell and Greer:

Senate bill No. 4, a bill to be entitled "An act to fix and limit the fees and compensation of clerks of the district court, district attorneys, county attorneys, sheriffs and constables in felony cases to be paid by the State, and to fix the compensation of assessors and collectors of taxes, and to limit and to regulate the compensation of the sheriff, clerk of the county court, county judge, district and county attorney, clerk of the district court, assessor and collector of taxes, and to prescribe penalties for the violation of this act, and to repeal all laws in conflict herewith."

Read first time, and referred to the Committee on Finance.

By Senator Wayland:

Senate bill No. 5, a bill to be entitled "An act making appropriations for deficiencies in the appropriations

for the years ending February 28, 1897, and previous years."

Read first time, and referred to the Committee on Finance.

By Senator Bowser:

Senate bill No. 6, a bill to be entitled "An act making appropriations for the years beginning March 1, 1897, and ending February 28, 1899, and for other purposes."

Read first time, and referred to the Committee on Finance.

By Senator Terrell:

Resolved, that Miss Henrietta Davis and Mr. B. N. McNeil be employed by this Senate to perform the duties of general and special committee clerks during the special session, and that they each receive $4 per day for their services.

Adopted.

By Senator Beall:

Resolved by the Senate, that Garvey Harrison and Wells Turner be employed as pages for the first special session of the Twenty-fifth Legislature, and shall each receive a compensation of $2 per day, and that Garvey Harrison be assigned to duty upon the south side of the Senate Chamber and Wells Turner be assigned to duty upon the north side of the Senate Chamber.

Adopted.

Resolved, that four porters be employed by the Senate to serve during the remainder of the special session now convened, at $2 per day, and that Assistant Sergeant-at-Arms Pace be instructed to select that number from the force of porters now in the service of the Senate.

Adopted.

By Senator Bailey:

Resolved, that T. H. Napier, our efficient Postmaster at the regular session of the Twenty-fifth Legislature, be retained in the same capacity during the special session of the Twenty-fifth Legislature, at the compensation heretofore received by him.

Adopted.

Call concluded.

On motion of Senator Stafford, Postmaster Napier was excused for to-day and to-morrow, on account of sickness in his family.

On motion of Senator Ross, the Senate adjourned to 10 a. m. to-morrow.

SIXTH DAY.

Senate Chamber,
Austin, Tex., Friday, May 28.

Senate met pursuant to adjournment. Lieutenant Governor Jester in the chair.

Roll called.

Quorum present, the following Senators answering to their names:

Atlee.	Linn of Wharton.
Bailey.	Morriss.
Beall.	Neal.
Bowser.	Rogers.
Burns.	Ross.
Colquitt.	Stafford.
Gough.	Stone.
Greer.	Terrell.
Harrison.	Wayland.
Kerr.	Woods.
Lewis.	Yett.
Linn of Victoria.	

Absent.

Darwin.	Tillett.
Dibrell.	Turney.
Goss.	Yantis.
Presler.	

Excused.

Boren.

Prayer by the Chaplain, Rev. F. S. Jackson, as follows:

Almighty God: We beseech Thee to direct us in all the way that we should take in view of our great responsibilities and opportunities. Enable us to see the measure of our life, and to understand the brevity of our day, and, with all the wakefulness of heart, and industry of hand, and vigilance of mind, may we be about the work Thou hast given to do, and be found at last as they who watch for Thee. Direct our nation in all the crises of its history, inspire the minds of men by Thy holy spirit, and quiet the spirit of unrest and uncertainty of to-day. Bless our homes, and keep in health and safety our loved. Regard the State; may this be a year of great peace and prosperity. Do Thou guide us to-day, for Christ's sake. Amen.

Pending the reading of the Journal of yesterday,

On motion of Senator Neal, the same was dispensed with.

On motion of Senator Colquitt,

Senator Dibrell was excused for this week, on account of important business.

The following invitation was read:

Austin, Texas, May 28, 1897.

Hon. Geo. T. Jester, Lieutenant-Governor and President of the Senate:

Sir: In behalf of the union printers of the city of Houston, I take pleasure in extending to you, and through you to the Senate and all the departments of our government, a cordial invita-